The assistant legislative clerk proceeded to call the roll.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until the hour of 12:15 p.m.

Thereupon, at 11:54 a.m., the Senate recessed until 12:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. SESSIONS).

The PRESIDING OFFICER. The pending business is the Treasury and General Government appropriations bill, fiscal year 1999.

Mr. THOMAS addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Mr. President, I ask unanimous consent to speak as in morning business for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

FEDERAL ACTIVITIES INVENTORY REFORM ACT

Mr. THOMAS. Mr. President, there are a number of things that many of us feel to be very important in terms of principles. One of them is federalism, of course—making the appropriate division between those things that are done in State government and those things that are done in local government, and the role of Federal Government. Another, it seems to me, is to do those things that can be done in the private sector, and that has, indeed, been the policy of this Government for a very long time.

I rise today to express my deep appreciation for the members of the Senate Governmental Affairs Committee and staff for their time and effort in developing a consensus on my legislation to codify this 40-year-old Federal principle that has been in place.

In the beginning of this Congress, I introduced S. 314, the Freedom from Government Competition Act. This legislation is an attempt to put in statute a workable process by which the Federal Government utilizes the private sector to do those things that are commercial in nature. This, indeed, has been the policy of the Government for a very long time. In fact, as early as 1932, Congress first became aware of the fact that the Federal Government was starting to carry out activities of a commercial nature and said that is not necessary and we should not do that.

In 1954, a bill to address the issue passed the House and was reported by the Committee on Governmental Affairs. At that time, the Eisenhower administration said that we would take care of it administratively. Therefore, Bureau of the Budget Bulletin 55–4 was issued, and there was no further action taken.

To make a relatively long story short, all the administrations since that time in one way or another have endorsed the idea of taking those things that could at least as well be done in the private sector as in the Government, allowing for some competition.

There is a circular now called A–76 which has been endorsed since 1955. Unfortunately, it hasn't been enforced. Unfortunately, when it is only a bulletin or Executive order, there is no real appeal process. What we are seeking to do is to put that concept into statute—it has now been approved by the committee in the Senate; it has been approved by the committee in the House—that would simply say to agencies, we want you to take an annual inventory of those kinds of things that you do, those that are commercial in nature. There ought to be a fair opportunity for the private sector to seek to compete in those areas.

Mr. President, we hope that that will come before the Senate and the House before this session is over; that it would, indeed, be put in statute, that concept that has been there for a very long time, the notion simply being that the taxpayers benefit from the cost, and whoever can do this the most efficiently, whether it be mapping, whether it be laboratory work, whether it be all kinds of things that are often and always done in the private sector, that can be done better and more efficiently there, will, indeed, be done there.

To reiterate, that policy is now found in OMB Circular A–76 and has been endorsed by every administration, of both parties, since 1955. However, the degree of enthusiasm for implementation of the circular has varied from one administration to another. In fact, the issue of government competition has become so pervasive that all three sessions of the White House Conference on Small Business, held in 1980, 1986 and 1995, ranked this as one of the top problems facing America's small businesses. According to testimony we received, it is estimated that more than half a million Federal employees are engaged in activities that are commercial in nature.

However, the purpose of my legislation is not to bash Federal employees. I believe most are motivated by public service and are dedicated individuals. However, from a policy standpoint, I believe we have gone too far in defining the role of government and the private sector in our economy. Because A–76 is nonbinding and discretionary on the part of agencies, too many commercial activities have been started and carried out in Federal agencies. Because A–76 is not statutory, Congress has failed to exercise its oversight responsibilities. Further, by leaving ''make or buy'' decisions to agency managers, there has been no means to assure that agencies ''govern'' or restrict themselves to inherently governmental activities, rather than produce goods and services that can otherwise be performed in and obtained from the private sector.

Among the problems we have seen with Circular A–76 is (1) agencies do not develop accurate inventories of activities (2) they do not conduct the reviews outlined in the Circular, (3) when reviews are conducted they drag out over extended periods of time and (4) the criteria for the reviews are not fair and equitable. These are complaints we heard from the private sector, government employees, and in some cases from both.

In the 1980's our former colleague Senator Warren Rudman first introduced the ''Freedom from Government Competition Act'' in the Senate. Later, Representative JOHN J. DUNCAN, Jr. (R–TN) introduced similar legislation in the House. I was a cosponsor of that bill when I served in the other body. Upon my election to the Senate in the 104th Congress, I introduced the companion to Representative DUNCAN's bill in the Senate.

On Wednesday, July 15, 1998 the Senate Governmental Affairs Committee unanimously reported a version of S. 314 that is a result of many months of discussions among both the majority and minority on the committee, OMB, Federal employee unions and private sector organizations. The amendment in the nature of a substitute offered by Chairman FRED THOMPSON and approved by the committee is a consensus and a compromise.

It is important to point out that the bill that I introduced in the 104th Congress was an attempt to codify the original 1955 policy that the government should rely on the private sector. After a hearing on that bill was convened by Senator STEVENS, during his tenure as chairman of the Committee on Governmental Affairs, it became clear to me that it was necessary to add to the bill the concept of competition to determine whether government performance or private sector performance resulted in the best value to the American taxpayer. While S. 314 as introduced, and H.R. 716 introduced in the House, was still entitled the ''Freedom from Government Competition Act,'' it in fact not only did not prevent government competition, but it mandated it. This was not a change that private sector organizations came to comfortably support. However, inasmuch as OMB Circular A–76 changed through the years from its original 1955 philosophical statement to its more recent iterations that required public-private competition, I revised my bill when introducing it last year to include such competitions, provided they in fact are conducted and that when conducted, they are fair and equitable comparisons carried out on a level playing field.

I would also hasten to add that the measure reported by the Senate Governmental Affairs Committee, which I hope will be promptly approved by the

full Senate, is significantly different than S. 314 as introduced. While S. 314 as introduced was opposed by the administration and by the Federal employee unions, the compromise measure reported from the committee is not opposed by these groups.

Mr. President, this is important legislation that I believe will truly result in a government that works better and costs less. Certainly government agency officials should have the ability to contract with the private sector for goods and services needed for the conduct of government activities. This bill will not inhibit ability. However, it should not be the practice of the government to carry on commercial activities for months, years, even decades without reviewing whether such activities can be carried out in a more cost effective or efficient manner by the private sector. I believe that the drive to reduce the size and scope of the Federal Government will be successful only when we force the government to do less and allow the private sector to do more.

During the course of our hearings, it became abundantly clear that there are certain activities that the Federal Government has performed in-house which can and should be converted to the private sector. Areas such as architecture, engineering, surveying and mapping, laboratory testing, information technology, and laundry services have no place in government. These activities should be promptly transitioned to the private sector.

There are other activities in which a public-private competition should be conducted to determine which provider can deliver the best value to the taxpayer. This includes base and facility operation, campgrounds, and auctioning.

There are several key provisions in the bill upon which I would like to comment. In particular, section 2(d) requires the head of an agency to review the activities on his or her list of commercial activities ''within a reasonable time''. OMB strongly opposed a legislative timetable for conducting these reviews. As a result of the compromise language on this matter, it will be incumbent on OMB to make certain these reviews are indeed conducted in a reasonable time frame. These reviews should be scheduled and completed within months, not years. I will personally monitor progress on this matter, as will the Governmental Affairs Committee. I urge OMB to exercise strong oversight to assure timely implementation of this requirement by the agencies.

This provision also requires that agencies use a ''competitive process'' to select the source of goods or services. In my view, this term has the same meaning as ''competitive procedure'' as defined in Federal law (10 U.S.C. 2302(2) and 41 U.S.C. 259(b)). To the extent that a government agency competes for work under this section of the bill, the government agency will be treated as any other contractor or offeror in order to assure that the competition is conducted on a level playing field.

Another issue that I have been concerned about is the proliferation of Interservice Support Agreement's (ISSA's). Under the ''FAIR'' Act, consistent with the Economy Act (31 U.S.C. 1535), items on the commercial inventory that have not been reviewed may not be performed for another federal agency. In addition, any item on the inventory cannot be provided to state or local governments unless there is a certification, pursuant to the Intergovernmental Cooperation Act (31 U.S.C. 6505(a)).

Enactment of the ''FAIR'' Act is a major achievement because it codifies a process to assure government reliance on the private sector to the maximum extent feasible. Further, it will put some teeth into Executive Order 12615 issued by President Reagan, which is still on the books today.

Again, I thank the members of the Senate Governmental Affairs Committee and the committee's staff, for all of the hard work necessary to forge this compromise. I look forward to working with them on thorough congressional oversight on the implementation of this bill.

I yield the floor.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. I thank the Chair.

TREASURY AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 1999

The Senate continued with the consideration of the bill.

Mrs. FEINSTEIN. Mr. President, following my remarks, it will be my intention to offer an amendment to close a gaping loophole in legislation which we passed 4 years ago to make the streets of this country safe. That specific legislation was legislation that prohibited the manufacture and sale of 19 commonly used assault weapons, semiautomatic assault weapons, that have been used to kill police, used by grievance killers, used by gangs, used by cartels, used by drive-by shooters.

The legislation also contained provisions that sought to eliminate the sale and transfer of the high-capacity clips and magazines that would hold more than 10 rounds of ammunition. And, in fact, today it is illegal in this country to domestically manufacture and sell a new clip, drum or strip that was made in this country, except to the military, police, or for nuclear power plant protection. It has become evident that though this legislation has been successful in reducing the criminal use of the 19 banned assault weapons, the provisions in this law aimed at reducing the availability of these large-capacity ammunition feeding devices have been rendered ineffective.

At the request of the distinguished Senator from Idaho, who was on the floor a moment ago, the 1994 law grandfathered existing high-capacity clips which were manufactured before the effective date of the ban to allow those clips which had a bill of lading on them to enter the country and to allow dealers to recover their expenses by selling off their existing stocks. The same thing existed for assault weapons themselves.

The President and Secretary of the Treasury closed this loophole through his executive decision which used the 1968 law, which said that any weapon imported into this country must meet a sporting use test. And 1.6 million of these semiautomatic assault weapons were essentially cut off from importation. The thrust of the legislation was to eliminate the supply over time —not to prohibit possession, but over time, because there are so many of these weapons and clips in this country now, to cut down on their supply.

I will never forget, because the distinguished Senator from Idaho did approach me on the floor—we were standing right down in the well; I remember it as clear as if it was yesterday, although it was almost 5 years ago—and indicated that he was concerned about weapons that had a bill of lading on them which had been manufactured pre-assault weapons ban and which were in the process of transit into this country.

My point, Mr. President, is that now, 4 or 5 years later, the existing supply of these clips surely has been used up. However, foreign clips have continued to pour into the United States.

From July of 1996 to March of 1998, the Bureau of Alcohol, Tobacco and Firearms approved 2,500,000 large-capacity clips for importation into this country.

Recently, that number has skyrocketed even further. In just the last 5 months, BATF has approved permits for 8.1 million large-capacity clips for importation into America. That represents a 314-percent increase in one-fourth of the time.

These clips have been approved to come through at least 20 different countries. It is difficult to know the place of manufacture, but they come through 20 different countries into this country.

I would like to just quickly go through the countries that they come through. And there are some interesting things. Austria, Belgium, Chile, Costa Rica, Czech Republic, Denmark, England—and clips manufactured somewhere abroad come through Great Britain; there are actually 250-round magazines—250-round magazines—for sale in this country and 177-round magazines for sale in this country—Germany, Greece, Hungary, Indonesia, Israel, Italy, Nicaragua, South Africa, Switzerland, Taiwan, and Zimbabwe.

So the total is 8.8 million in two years approved to come in.

Unfortunately, there is virtually no reliable method to determine the date of manufacture on the millions of clips